

REMARKS

Claims 1-58 are pending in the present application. Of the above claims, claims 1-14, 16, 26-30 and 44-48 have been withdrawn from further consideration by the "Response to Restriction Requirement" dated June 25, 2004. This leaves claims 15, 17-25, 31-43 and 49-58 under active consideration in the present application. Of these claims, all have been rejected except claims 20-25. With regard to claims 20-25, the examiner has indicated that these would be allowable if rewritten in independent form including all of the limitation of the base claim and any intervening claims. The examiner is graciously thanked for the indication of the allowability of these claims, and they have been amended as indicated to put them in allowable condition.

The examiner has indicated that the drawings are objected to under 37 CFR 1.83(a) because the subject matter of claim 51 is not shown in the drawings. It is respectfully submitted that the examiner has misread claim 51 and there is full support in the drawing for this claim as shown in Figure 24.

Claim 51 depends upon claim 50, which in turn depends upon claim 49. Read together, claim 51 requires a rectangular support member having two substantial parallel channels running through the support member. The examiner is referred to page 32 for a description of the construction shown in Figure 24. It is clear that there are a pair of channels 32, which are parallel to each other provided in a support member 31B, which is clearly rectangular in shape. Therefore, it is clear that the claim is supported by Figure 24 and it is respectfully requested that the objections to the drawing be withdrawn.

While looking into the matter of the drawings, attorney for Applicant noted that, inadvertently, a section line had been left off Fig. 12, and cross-hatching had been left off Fig. 13. This error has been corrected.

CLAIM OBJECTIONS

Claim 53 is objected to by the examiner because claim 53 recites “said hole” without proper antecedent basis. Applicant has changed the dependency of claim 53 from claim 51 to claim 52, which claims “a hole through the support member”. Therefore, in claim 53 the term “said hole” correctly refers to the hole in claim 52.

CLAIM REJECTIONS – 35 USC §102

The examiner has made several claim rejections under 35 USC §102. The examiner first rejects claims 15, 18, 19, 35 and 37 as being anticipated by Paepke, et al., US Patent No. 3,897,923. The examiner states: “the patent to Paepke, et al. discloses a tubing device comprising a curvilinear channel 34 disposed therein for receiving a piece of tubing 14 and a means 36 for holding the piece of tubing within the channel, as recited in claim 15.” Figure 3 discloses the channel having a cross-section with a greater than semi-circular cross-section.

Claim 15 has been amended to require “means for holding a piece of intravenous tubing in said channel”. Paepke nowhere shows or suggest a device for use with intravenous tubing. Since what is now claimed is not shown in the art, the rejection over Paepke has been overcome and should be withdrawn.

The examiner next rejects claims 15, 17-19, 31, 33-35, 37-43, 49, 50, 54-56 and 58 as being anticipated by Riffle, US Patent No. 6,113,039. The examiner states: “the patent to Riffle discloses a weight-bearing tube support comprising a curvilinear channel 15 disposed therein for receiving a piece of tubing 11 and a collar 24 for holding the piece of tubing in the channel”. The channel has a semi-circular cross-section and the collar has a greater than semi-circular cross-section as recited in claim 19.

Claim 15 has been amended to require “the means for holding a piece of intravenous tubing in said channel is a greater than semi-circular cross-section of the channel”. Riffle clearly states that it is the collar 24 which holds the flexible elongated element in place. Thus, claim 15 as amended is clearly allowable over Riffle as everything in claim 15 as amended is not found within the “four corners” of Riffle.

With regard to claim 35, it has been amended to require that the flexible tubing be a flexible “intravenous” tubing. Intravenous tubing is nowhere shown or suggested in Riffle and, therefore, the anticipation rejection of claim 35 is in error.

With regard to claim 37, Riffle does not show a method for transporting a fluid for a medical application and therefore, the rejection under 35 USC §102 is improper. With regard to claims 38-41, each of these claims has been amended to require a “flexible intravenous tube”. Riffle does not show a flexible intravenous tube and therefore, the rejection on Riffle under 35 USC §102 is improper. Claims 42 and 43 have been canceled rendering their rejection as being anticipated by Riffle as moot.

Claims 49 and 50 are allowable over Riffle because two channels through a support member for retaining the tube are required. This is not shown in the prior art. Claims 54-56 and 58 depend on allowable parent claims and are, therefore, allowable.

The examiner next rejects claims 15 and 32 as being anticipated by Maxwell, US Patent No. 9,55,342. Claim 15 as amended is now allowable over Maxwell because claim 15 has been amended to require “a greater than semi-circular cross-section of the channel”. Referring to column 1, last line, Maxwell is said to have a semi-circular groove 9. Therefore, Maxwell does not show a greater than semi-circular cross-section of the channel, and claim 15 is allowable.

CLAIM REJECTIONS 35 USC §103

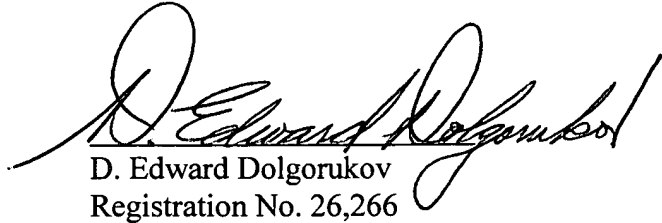
Lastly, the examiner rejects claims 51-53 and 57 as being obvious in view of US Patent No. 6,113,039 to Riffle. The examiner states “the patent to Riffle discloses the recited structure, as discussed in preceding paragraph no. 4, but does not disclose the support structure being substantially rectangular or at being flexible. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the support device in a rectangular shape and of a flexible material because applicant has not disclosed that these features provided advantages used for a particular purpose or solves a stated problem”.

It is respectfully submitted that this is not the proper standard for an obviousness rejection. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claimed limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art and not in applicant’s disclosure.

There is no suggestion whatsoever within the Riffle reference for making the support device in a rectangular shape, or of a flexible material. These suggestions only come from applicant’s disclosure. Therefore, the examiner is using improper hindsight reconstruction to make this rejection. It is respectfully submitted that under the proper standards for making an obviousness rejection, claims 51-53 and 57 are allowable.

In view of the above amendments, and the remarks explanatory thereof, a favorable reconsideration of the present application and the passing of this case to issue is courtesy solicited.

Respectfully submitted,



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IN THE DRAWINGS

The Examiner is courteously requested to approve the addition of Section Line 13-13 in Figure 12 to conform the drawings to the specification. Fig. 13 is described as “a sectional view”, taken in the direction of the arrows, along the section line 13-13 of Fig. 12. Section line 13-13 was inadvertently omitted from Fig. 12. This correction will fix the omission. Fig. 13 has also been properly cross-sectioned.

The Examiner is also requested to reconsider his requirement that the subject matter of claim 51 be inserted in the drawings. As discussed in the “Remarks” section, the subject matter of claim 51 is believed shown in Fig. 24.

A replacement sheet showing Fig. 12 and Fig. 13, as amended, is attached hereto.